

**BEFORE THE STATE BOARD OF MEDIATION
STATE OF MISSOURI**

INTERNATIONAL BROTHERHOOD OF)	
ELECTRICAL WORKERS, LOCAL 53,)	
)	
Petitioner,)	
)	
v.)	Public Case No. R 95-034
)	
CITY OF HARRISONVILLE,)	
)	
Respondent.)	

JURISDICTIONAL STATEMENT

The State Board of Mediation is authorized to hear and decide issues concerning appropriate bargaining units by virtue of Section 105.525 RSMo 1994. This case appears before the State Board of Mediation upon the filing by International Brotherhood of Electrical Workers, Local 53 (hereinafter referred to as the Union) of a petition for certification as the exclusive bargaining representative for certain employees of the City of Harrisonville. A hearing was held on November 9, 1995 in Harrisonville, Missouri, at which representatives of the Union and the Employer were present. The case was heard by State Board of Mediation Chairman Francis Brady and employee member Joel Rosenblit. The record was later submitted to employer member Linda Cooper. At the hearing the parties were given full opportunity to present evidence. They did not file briefs. After a careful review of the evidence, the Board sets forth the following Findings of Fact, Conclusions of Law and Direction of Election.

FINDINGS OF FACT

The City's water/sewer superintendent, Robert Surber, is responsible for supervising all water treatment, sewer treatment, water/sewer distribution and meter

reading functions. Surber supervises a total of 16 employees: four work in water treatment, four work in sewer treatment, four work in water/sewer distribution, three are meter readers and one employee is the caretaker at Lake Harrisonville (the City's water source). Surber is on call during his off hours if an emergency arises within his areas of responsibility. As part of his job, Surber makes up budget requests for the areas he supervises. Additionally, he formulates policy for the areas he supervises. Surber reports to the director of public works (Ron Collins) who in turn reports to the city administrator (Robert Haycock).

As part of his responsibilities, Surber supervises the operation of the City's water treatment plant and its waste water treatment plant. Although he officially supervises both plants, he is not involved in the day to day operation of either plant; he relies on the chief plant operator of each plant to run the plant on a day to day basis. Surber does not have the technical expertise necessary to run either plant, nor is he licensed to do so. Surber therefore relies on the chief plant operators to provide him with technical support. As an example, recently there was a high level of manganese in the water. A chief plant operator, together with some consulting engineers, devised a solution to the problem of the high manganese in the water.

Four employees work at each treatment plant: a chief operator and three plant operators. William Kelly is the chief plant operator at the waste water treatment plant and Michael Thornton is the chief plant operator at the water treatment plant. The plant operators report to the chief plant operator who in turn reports to the water/sewer superintendent (Surber).

Both treatment plants operate in basically the same manner in that employees follow an established routine in performing daily tasks. The waste water treatment plant operates seven days a week from 7:00 a.m. to 9:00 p.m. The water treatment plant operates seven days a week from 8:00 a.m. to about 9:30 p.m. The four employees at

each plant cover this time period by working overlapping shifts during those hours. They either work from 7:30 a.m. to 3:00 p.m. or 1:00 p.m. to 9:00 p.m. Kelly works the first shift; the record does not indicate which shift Thornton works. There are two days a week that the chief plant operator is off work and not at his plant. The chief plant operator at the waste water treatment plant is off Friday and Saturday and the chief plant operator at the water treatment plant is off Sunday and Monday. On those days there is no chief plant operator on duty. The most employees that usually work together at any one time is two. On occasion, an employee works alone in the plant; sometimes it is the chief plant operator and sometimes it is a plant operator. Whoever is on duty (whether it is a plant operator or the chief plant operator) performs the required lab tests and documents same on a log sheet.

Both chief plant operators are in charge of their respective treatment plants. If a question arises about how something should be done or handled at the plant, the chief plant operator decides how to handle it. If something non-routine arises at the plant during their off work hours, the chief plant operator is contacted first. The chief plant operators monitor their plant's facilities, its operations, and all the technical laboratory work that is performed there on a regular basis. They also check pumps and other equipment, collect water samples, do routine maintenance, and perform lab tests required by the state and federal government. The plant operators perform these tasks as well. However, the chief plant operators perform the following tasks which are not performed by the plant operators. First, the chief plant operators fill out lab reports required by the state and federal government. Second, they monitor and order all chemicals and supplies needed for their plant. Third, they make up the routine maintenance schedule for equipment in their plant and ensure that the schedule is followed. Fourth, they provide technical expertise and support to the water/sewer superintendent. As an example, they interpret technical data which is received from the

state for the superintendent. Fifth, they suggest items to the superintendent for possible inclusion as budget requests. Sixth, they monitor the work performed by the plant operators to ensure proper performance. Seventh, they assign work to the plant operators if necessary. Eighth, they ensure there is adequate staffing for their plant when plant operators are sick or on vacation. Overall, these eight job tasks take about 5% of the chief plant operators' total work time. The chief plant operators spend the remainder of their work time doing the same work as the plant operators do (namely checking equipment, collecting water samples, and performing routine maintenance and lab tests).

Overtime is not usually worked at either plant. If it is though, the chief plant operators do not authorize it on their own motion; instead, Surber has to approve it.

All of the operators are licensed and certified by the State Department of Natural Resources. The lowest level license, known as a starter license, is category D. The licenses proceed up in ranking to category A which is the highest level. The City requires that all operators have an A license within a certain time frame after being hired. Both chief plant operators have an A license. At the waste water treatment plant, two of the plant operators have an A license and one plant operator has a C license. At the water treatment plant, one plant operator has an A license, one has a B license and one has a C license.

Plant employees arrange their vacations among themselves so that just one person is off at a time. After the employees select their vacation days, they submit a leave form to the chief plant operator who signs it. Before the chief plant operator signs the leave request he ensures there is someone available to fill the shift. The leave form is then submitted to Surber who approves it. When the completed leave request form comes to the superintendent, the superintendent knows that the absence is covered. If an operator calls in sick, the chief plant operator finds someone to fill the shift.

With regard to evaluations, Kelly has never evaluated an employee nor been consulted in the evaluation process. Thornton has never completed an employee's evaluation either, but was recently consulted by Surber when he (Surber) was evaluating the plant operators at the water treatment plant. The evaluation forms are completed by Surber who then submits them to the city administrator. The superintendent and the city administrator sign the completed evaluations; the chief plant operators do not. The record does not contain any completed evaluations. Additionally, the record does not indicate what relationship evaluations have on the plant operators moving through the salary schedule.

Neither chief plant operator has ever hired, promoted or transferred anyone, laid anyone off or given anyone a raise. With regard to hiring, the record indicates that the superintendent reviews job applications, interviews candidates and hires them on his own motion. Insofar as the record shows, no chief plant operator has ever had any input into hiring decisions. With regard to promotions, chief plant operators are not empowered to promote anyone. With regard to transfers, the record indicates that chief plant operators are not empowered to transfer employees or change their shifts on their own volition. In the only example of same documented in the record, a plant operator who wanted to change his shift first talked to the chief plant operator who referred the matter to Surber. It was Surber who approved the requested change.

Chief plant operators are not empowered to discharge plant operators and have not done so. Historically speaking, there has been little discipline imposed on treatment plant employees. When suspensions and written reprimands have been imposed though it was done by the superintendent, not a chief plant operator. The record indicates that on one occasion Thornton met with the superintendent and the city administrator and they discussed whether to discipline an unnamed plant operator. No discipline was subsequently issued to the operator though.

With regard to wages, the plant operators and the chief plant operators are paid pursuant to a salary schedule. Employees progress through this schedule based on the type of license they hold and their length of service. Operators with a class D license are at pay grade 6, operators with a class C license are at pay grade 7, operators with a class B license are at pay grade 8, operators with a class A license are at pay grade 9, and chief plant operators are at pay grade 10. Each of these pay grades contain a range for length of service. In theory, the chief plant operator should be the highest paid employee at the plant because they are in the highest pay grade. In practice though, it is possible under this salary schedule for a senior employee to be paid more than the chief plant operator. Such is the case at the water treatment plant because Thornton is not the highest paid employee there. With regard to benefits, the plant operators and the chief plant operators receive the same fringe benefits.

CONCLUSIONS OF LAW

IBEW, Local 53 petitioned to be certified as the exclusive bargaining representative for the following bargaining unit:

All full-time and regular part-time employees of the City of Harrisonville in the following departments: water and sewer maintenance, meter department, wastewater treatment, water treatment, streets, electric, code enforcement, animal control, and parks and recreation department employees, and excluding office clerical employees, guards, supervisors, police department employees, and all other employees.

An appropriate bargaining unit is defined by Section 105.500 (1) RSMo 1994 as:

A unit of employees at any plant or installation or in a craft or in a function of a public body which establishes a clear and identifiable community of interest among the employees concerned.

At the hearing, the parties agreed to the Union's proposed bargaining unit description as modified. One modification was that the parties agreed, as shown on Exhibit 1, that parks and recreation department employees were excluded from the

bargaining unit. The parties were also able to agree on all named inclusions and exclusions to the bargaining unit (see Exhibit 1) with the exception being the two chief plant operators. Thus, the only issue herein is the status of those two employees and whether they are included or excluded from the unit. Given the foregoing agreement, we have adopted the bargaining unit description proposed by the Union with the following modifications. First and foremost, we obviously have to decide whether the two chief plant operators are included in, or excluded from, the bargaining unit. If we decide they are to be included in the bargaining unit, we will place them in the list of inclusions to Exhibit 1. Conversely, if we decide they are to be excluded from the bargaining unit, we will place them in the exclusions. Second, we have changed the parks and recreation department from a named inclusion to a named exclusion, pursuant to the parties agreement.

As noted above, the parties agree that the sole issue here is whether the two chief plant operators should be included or excluded from the agreed-upon bargaining unit. The Employer contends they should be excluded because of their supervisory and managerial status while the Union disputes that assertion. We will first address their claimed supervisory status.

The Missouri Public Sector Labor Law gives certain employees the right to form and join labor organizations and to present proposals to their employers relative to conditions of employment. Although supervisors are not specifically excluded from the law's coverage, case law from this Board and the courts have carved out such an exclusion. See Golden Valley Memorial Hospital v. Missouri State Board of Mediation, 559 S.W.2d (Mo.App. 1977) and St. Louis Fire Fighters Association, Local 73 v. City of St. Louis, Missouri, Case No. 76-013 (ABM 1976). This exclusion means that supervisors cannot be included in the same bargaining unit as the employees they

supervise. Since a dispute exists here concerning whether the two chief plant operators are supervisors, it is necessary for us to determine if such is, in fact, the case.

This Board has traditionally used the following indicia to determine supervisory status:

- (1) The authority to effectively recommend the hiring, promotion, transfer, discipline or discharge of employees;
- (2) The authority to direct and assign the work force, including a consideration of the amount of independent judgment and discretion exercised in such matters;
- (3) The number of employees supervised and the number of other persons exercising greater, similar or lesser authority over the same employee;
- (4) The level of pay, including an evaluation of whether the person is paid for his or her skills or for his or her supervision of employees;
- (5) Whether the person is primarily supervising an activity or primarily supervising employees; and
- (6) Whether the person is a working supervisor or whether he or she spends a substantial majority of his or her time supervising employees.¹

We will apply those factors here as well. Not all of the above factors need to be present for a position to be found supervisory. In each case the inquiry is whether these factors are present in sufficient combination and degree to warrant the conclusion that the position is supervisory.²

After applying the above-noted factors to the two chief plant operators, we conclude that on balance they do not meet this supervisory test. Our analysis follows.

Attention is focused initially on factor (1). It is undisputed that the chief plant operators are not empowered to hire, fire, promote, or transfer employees on their own volition; the responsibility for those tasks rests with Surber or higher up the chain of

¹ See, for example, City of Sikeston, Case No R 87-012 (SBM 1987).

² See, for example, Monroe County Nursing Home District, d/b/a Monroe Manor, Case No R 91-016 (SBM 1991).

command. That said, the chief plant operators have a role in recommending discipline and evaluations. An analysis of their role follows.

With regard to discipline, the record does not contain a single instance where a chief plant operator disciplined a plant operator. When discipline has been imposed, it was done by Surber; not a chief plant operator. On one occasion though a chief plant operator (Thornton) met with the superintendent and the city administrator and they discussed whether to discipline a plant operator. The plant operator was not disciplined as a result of that meeting.

With regard to evaluations, the record indicates that it is Surber who evaluates the plant operators and signs their completed evaluations along with the city administrator. Surber has never consulted with Kelly when he was evaluating plant operators, but he consulted with Thornton once during same.

The foregoing persuades us that the chief plant operators have an extremely limited role in recommending discipline and evaluations. Certainly they are not an indispensable party in the City's disciplinary and evaluating process. While the chief plant operators may be consulted by Surber before he disciplines and evaluates the plant operators, Surber is not obligated to follow their recommendations.

The focus now turns to factor (2), the authority to direct and assign the work force. There is no question that the chief plant operators are in charge of the plant operators and assign them duties. The chief plant operators therefore direct and oversee the plant operators on a day-to-day basis. In doing so, the chief plant operators monitor the work activity performed by the plant operators and ensure it is performed correctly. By and large though, the plant operators know their job and do it without direction.

The chief plant operators ensure that each shift is always adequately staffed. Before they sign vacation slips for the plant operators, they ensure there is someone

available to fill the shift. Likewise, if a plant operator calls in sick, the chief plant operator finds someone to fill the vacancy.

The foregoing persuades us that the chief plant operators are certainly called upon to exercise their discretion on occasion and make decisions concerning the operation of their plant. However, their decisions invariably involve the operation of their plant--not personnel and labor relations. Responsibility for the latter rests with Surber and further up the Employer's chain of command.

Next, with regard to factor (3), the record indicates that the number of employees "supervised" at each plant is three. If the two chief plant operators are found to be supervisors over the six plant operators, this would result in a ratio of one supervisor for every three employees. In our view, that ratio is inordinately low. With the chief plant operators in the bargaining unit though, there is still one supervisor (Surber) supervising 16 employees. While that ratio is admittedly high, it is not unheard of. Additionally, the evidence presented on the second part of the third factor (i.e. the number of other persons exercising greater, similar or lesser authority with respect to the same employees) demonstrated that there are several additional layers of supervision that exercise more authority over the plant operators than the chief plant operators do, namely the water/sewer superintendent, the director of public works and the city administrator. Practically speaking, the chief plant operators are at the bottom of the City's hierarchy in terms of exercising authority over the plant operators.

With respect to the level of pay (factor 4), it is noted that chief plant operators are paid at labor grade 10. Since all the plant operators are at lower pay grades (specifically 6 through 9), the chief plant operators should theoretically be the highest paid employees at their plant. However, the record indicates that is not the case. Due

to the way the pay grades are structured with ranges, at least one plant operator at the water treatment plant is paid more than that plant's chief plant operator.

Finally, with regard to the factors (5) and (6), it has previously been noted that the chief plant operators are in charge of their respective plants and oversee the work performed by the plant operators. They assign them work and ensure they perform it correctly. Be that as it may, they spend almost the entire work day doing the same work as the plant operators do (namely checking equipment, collecting water samples, doing routine maintenance, and performing lab tests). That being so, we are persuaded that their main job is to oversee their plant--not to supervise the plant operators for labor relations purposes. We therefore hold that while the chief plant operators oversee the plant operators on a day-to-day basis, they are essentially lead workers who do not exercise sufficient supervisory authority in such combination and degree to make them supervisors.

Having so found, attention is now turned to the claimed managerial status of the chief plant operators. Managerial employees, like supervisory employees, are not specifically excluded from the coverage of the Missouri Public Sector Labor Law. Nevertheless, case law from this Board and the courts have carved out an exclusion for managerial employees.³ The basis for excluding managerial employees from a bargaining unit is that their relationship to the employer is significantly at variance from those of other (bargaining unit) employees. Managerial status has been found where the employee participates in the formulation, determination and implementation of

³ See Department of Social Services, Case No. 83-012 (SBM 1984) and City of St. Louis, Lambert Airport, Case No. AC 94-001 (SBM 1994).

management policy, or has the effective authority to commit the municipal employer's resources.⁴

We find that the chief plant operators do not participate to any significant degree in making policy decisions, nor can they commit the employer's resources. With regard to the former (policy decisions), it is again noted that the main job of a chief plant operator is to run their plant on a day-to-day basis. In doing so, they follow established routines and procedures which they did not formulate on their own. If policy decisions need to be made, Surber makes them. To support its contention that the chief plant operators make policy decisions, the City cites the fact that Thornton helped devise a solution to the problem of high manganese in the water. In our view though, that was not a policy decision. With regard to the latter criteria (committing the employer's resources), the record evidence indicates that the chief plant operators order supplies and suggest items to Surber for possible inclusion as budget requests. We find that ordering supplies is simply a ministerial act. Similarly, we find that suggesting items to one's supervisor for possible inclusion as budget requests is not sufficient either. Insofar as the record shows, Surber is not obligated to include their proposed items in the budget requests which he prepares. Even if he does though, Surber's budget requests then have to go up the chain of command to the public works director and the city administrator. We therefore find that the chief plant operators do not have the effective authority to commit the employer's resources. Consequently, it is held that the chief plant operators are not managerial employees either.

ORDER

It is the decision of the State Board of Mediation that the two chief plant operators at issue here are not supervisory or managerial employees. They are therefore included in

⁴ Ibid.

the agreed-upon bargaining unit. The description of the bargaining unit found appropriate is as follows:

All full-time and regular part-time employees of the City of Harrisonville in the following departments: water and sewer maintenance, meter department, wastewater treatment, water treatment, streets, electric, code enforcement, and animal control, and excluding parks and recreation department employees, office clerical employees, guards, supervisors, police department employees, and all other employees.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the Chairman of the State Board of Mediation, or its designated representative, among the employees in the aforementioned bargaining unit, as early as possible, but no later than 45 days from the date below. The exact time and place will be set forth in the notice of election to be issued subsequently, subject to the Board's rules and regulations. The employees eligible to vote are those in the unit who were employed during the payroll period immediately preceding the date below, including employees who did not work during the period because of vacation or illness. Those employees ineligible to vote are those who quit or were discharged for cause since the designated payroll period and who have not been rehired or reinstated before the election. Those eligible to vote shall vote whether or not they desire to have IBEW, Local 53 as their exclusive bargaining representative.

The Employer shall submit to the Chairman of the State Board of Mediation, as well as to the Union, within fourteen calendar days from the date of this decision, an alphabetical list of names and addresses of employees in the aforementioned bargaining unit who were employed during the payroll period immediately preceding the date of this decision.

Signed this 12th day of January, 1996.

STATE BOARD OF MEDIATION

(SEAL)

/s/ Francis R. Brady
Francis R. Brady, Chairman

/s/ Joel Rosenblit
Joel Rosenblit, Employee Member

/s/ Linda Cooper
Linda Cooper, Employer Member